

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

NEXSAN TECHNOLOGIES
INCORPORATED,

Plaintiff and Counterclaim-Defendant,

v.

EMC CORPORATION,

Defendant and Counterclaim-Plaintiff.

C.A. No. 1:16-cv-10847-WGY

JURY TRIAL DEMANDED

ORAL ARGUMENT REQUESTED

**DECLARATION OF R. DAVID HOSP IN SUPPORT OF
EMC CORPORATION'S STATEMENT OF UNDISPUTED MATERIAL FACTS
IN SUPPORT OF ITS MOTION FOR PARTIAL SUMMARY JUDGMENT**

Pursuant to 28 U.S.C. § 1746, I, R. David Hosp, declare as follows:

1. I am a member of the Bar of the Commonwealth of Massachusetts and am admitted to practice before this Court. I am a principal with the law firm of Fish & Richardson P.C., One Marina Park Drive, Boston, MA 0220, counsel for Defendant and Counterclaim-Plaintiff EMC Corporation in this case. I have personal knowledge of the matters below.

2. I submit this Declaration to place before the Court true and accurate copies of the documents and testimony identified in EMC's Statement of Undisputed Material Facts in Support of its Motion for Partial Summary Judgment.

3. Attached hereto as Exhibit 1 is a true and accurate copy of the May 5, 2014 Virtual Geek blog post titled, "*VNX architectural evolution keeps rolling.*" (EMC-005519-524)

4. Attached hereto as Exhibit 2 is a true and accurate copy of the transcript of the September 27, 2016 deposition of Brian P. Henderson.

5. Attached hereto as Exhibit 3 is a true and accurate copy of a list of EMC's UNITY Presentations and Beta Testing Dates. (EMC-153702-705).

6. Attached hereto as Exhibit 4 is an excerpt of a true and accurate copy of the March 19, 2015 EMC presentation titled *Revolutionizing the Midrange*. (EMC-05444 at 485, 491-93).

7. Attached hereto as Exhibit 5 is an excerpt of a true and accurate copy of the November 13, 2015 EMC presentation titled *Partner Technical Summit Midrange Update*. (EMC-005500 at 509-16).

8. Attached hereto as Exhibit 6 is an excerpt of a true and accurate copy of an EMC presentation showing a screenshot the UNITY Graphical User Interface. (EMC-102652 at 665, 666, 669).

9. Attached hereto as Exhibit 7 is an excerpt of a true and accurate copy of a EMC presentation showing a screenshot the UNITY Graphical User Interface. (EMC-037675 at 698).

10. Attached hereto as Exhibit 8 is a true and accurate copy of a February 2016 EMC presentation showing EMC Beta customer feedback. (EMC-048094-98).

11. Attached hereto as Exhibit 9 is a true and accurate copy of an Excel spreadsheet showing early EMC's UNITY sales. (EMC-005518).

12. Attached hereto as Exhibit 10 is a true and accurate copy of the "TESS" Records for EMC's EMC UNITY mark (App. Ser. No. 87/020,237) and EMC's UNITY mark (App. Ser. No. 87/020,119), respectively.

13. Attached hereto as Exhibit 11 is a true and accurate copy of a standard EMC Non-Disclosure Agreement. (EMC-153365).

14. Attached hereto as Exhibit 12 is a true and accurate copy of an email from David Grey to Judy Kaldenberg sent on March 19, 2016. (NEXSAN-000404).

15. Attached hereto as Exhibit 13 is a true and accurate copy of an EMC presentation titled *UNITY Beta Feedback*. (EMC-005564-571).

16. Attached hereto as Exhibit 14 is a true and accurate copy of the “TESS” Records for the UNITY mark. (App. Ser. No. 86/948640).

17. Attached hereto as Exhibit 15 is a true and accurate copy of the “TESS” Records for the UNITY mark. (App. Ser. No. 86/948652).

18. Attached hereto as Exhibit 16 is a true and accurate copy of Nexsan’s Response to EMC’s Request for Admission No. 1.

19. Attached hereto as Exhibit 17 is a true and accurate copy of excerpts of the transcript of the September 30, 2016 deposition of Judy Kaldenberg.

20. Attached hereto as Exhibit 18 is a true and accurate copy of an April 29, 2016 letter from John Hurly, EMC’s counsel, to Steven Abreu, Nexsan’s counsel.

21. Attached hereto as Exhibit 19 is a true and accurate copy of a February 5, 2016 Nexsan email from Geraldine Osman to Lisa Cravens, Dylan Fitzpatrick, Tony Hampel, Mark Nikolaev, Judy Kaldenberg, and Rick Lewis. (NEXSAN-008245).

22. Attached hereto as Exhibit 20 is a true and accurate copy of a trademark application for the mark NEXSAN UNITY. (App. Ser. No. 86/948652).

23. Attached hereto as Exhibit 21 is a true and accurate copy of a trademark application for the mark UNITY. (App. Ser. No. 86/948640).

24. Attached hereto as Exhibit 22 is a true and accurate copy of May 3, 2016 Nexsan emails between John Merrill and Lisa Cravens. (NEXSAN-027064).

25. Attached hereto as Exhibit 23 is a true and accurate copy of May 23, 2106 to June 13, 2016 Nexsan emails regarding “EMC Unity Page Copy.” (NEXSAN-001814-822).

26. Attached hereto as Exhibit 24 is a true and accurate copy of a chart depicting the parties’ respective uses of the UNITY mark.

27. Attached hereto as Exhibit 25 is a true and accurate copy of a March 17, 2016 EMC email regarding beta test feedback. (EMC-035978-980).

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on October 14, 2016

/s/ R. David Hosp
R. David Hosp